

REGISTRATION SERVICES

Customer Information Bulletin

BULLETIN No. 162
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CONTENTS:

| | |
|---|----|
| 1. PLANNING AND DEVELOPMENT ACT. | 1 |
| 2 CITY OF STIRLING JOINS EAS2. | 14 |
| 3 ACCOUNTABILITY FOR PLANS, REGULATION 54 | 15 |

1. PLANNING AND DEVELOPMENT ACT.

INTRODUCTION

The Planning & Development Act 2005 ("the Act") has received Royal Assent on 12 December 2005 and will be proclaimed on 9 April 2006.

The Act will repeal the Western Australian Planning Commission Act 1985 (WAPC Act), the Metropolitan Region Town Planning Scheme Act 1959 (MRTPS Act) and the Town Planning and Development Act 1928 (TP&D Act). The Act also includes automatic dedications of roads from the Local Government [Miscellaneous Provisions] Act 1960 (LG (MP) Act).

The Act consolidates and makes a number of amendments to the existing planning legislation. The Act provides for an efficient and effective land use planning system in the State and it promotes the sustainable use and development of land within this State.

The Act provides for new provisions, modification of the existing provisions and provisions that merely reflect the law as it stands. The sections of the Act relevant to Department of Land Information (DLI) are sections 6, 24, 136, 145, 146, 147, 149, 150, 152, 165, 166, 167, 168, 180, 181, and 197. Sections 149 and 150 of the Act will not be proclaimed on the 9 April 2006 and will be dealt with in future notices to staff when those sections are proclaimed.

If an application for subdivision is lodged before 9 April 2006 and the Certificates of Title for the lots on that survey are created after 9 April 2006 then (a) the survey will contain references to the TP&D Act, and (b) the Certificates of Title will contain references to the corresponding sections of the Act. This will mean that in some cases the references on the Certificate



of Title will not match the references on the survey. However, this does not affect the validity of the references on the survey or the Certificate of Title.

Table 1 at the end of this notice shows a summary of the relevant cross-references between the Act and the superseded Acts.

SECTION 6 – Act does not interfere with public works (formerly section 32 of TP&D Act)

This is essentially a re-formatted version of section 32 TP&D Act that clarifies the circumstances of its use. Also note that a 'public work' is defined in section 4 of the Act. Practices for acquisition plans exempt from Western Australian Planning Commission (WAPC) approval will continue as they were for section 32.

SECTION 24 – Execution of Documents by WAPC

The WAPC is to have a common seal and is not to be affixed to any document except as authorised by the WAPC.

The common seal of the WAPC is to be affixed to a document in the presence of the chairperson and another member, or the chairperson and an officer of the WAPC authorised by the WAPC either generally or in any particular case to be so present, and each of them is to sign the document to attest that the common seal was so affixed.

The WAPC may, by writing under its common seal, authorise a member or members or an officer or officers of the WAPC to sign documents on behalf of the WAPC, either generally or subject to such conditions or restrictions as are specified in the authorisation.

A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.

SECTION 136 – Approval required for certain transactions where land not dealt with as a lot or lots (formerly Section 20 of TP&D Act)

The Act has removed the requirement for consent by the WAPC for leases and licenses to use and occupy **buildings** exceeding 21 years.

The Act has extended the period for leases and licenses to occupy **part of the land** (Part of a Lot) including any option to extend or renew the term or



period from the current 10 years to 20 years before consent from the WAPC is required.

SECTION 145 – Endorsement of WAPC Approval on plans (reflects Section 20AA of TP&D Act)

Subsection (2) extends the subdivision approval period to 4 years but only for subdivisions creating more than 5 lots. The subdivision approval period for subdivisions of 5 lots or less remains at 3 years. It also confirms the practice of staged subdivisions.

SECTION 146 - No Certificate of Title for subdivided land without endorsement of the WAPC approval (formerly Section 20 (2) of TP&D Act)

Section 146 provides that the Registrar of Titles is prohibited from creating or registering certain titles where a "title application" is not made within the prescribed period.

Plans Approved by WAPC before 9 April 2006

For plans approved before the 9 April 2006, section 146 of the Act provides that the Registrar of Titles is unable to issue Certificates of Title after the 8 April 2011.

Plans Approved by WAPC on or after 9 April 2006

For plans approved on or after the 9 April 2006, section 146 of the Act provides that the owners have 2 years from the date of the WAPC approval to apply for Certificates of Title, following the expiration of this 2 year period, the Registrar of Titles is unable to issue Certificates of Title.

An application for new Certificates of title outside of this period may be made but the Registrar of Titles is unable to create or register any titles with respect to that plan. If the applicant wishes to pursue a subdivision in respect of the subject land they must reapply to WAPC for an approval under section 135 of the Act.

Strata plans already have a mechanism in place to trap those that have 'lapsed' valuer's certificates. The business process effect of the Act on existing plans and diagrams is that WAPC approval will be deemed to have lapsed if an application for title has not been received within the prescribed period. This means that an application for title can not be processed by DLI in such circumstances.

All plans will now be given a status of 'expired' after the expiration of the appropriate time span with respect to the endorsement of WAPC approval.



For example on 10 April 2011 a plan that has been endorsed with SPC/WAPC approval before 9 April 2006 and made in order for dealings but which has not been dealt on will change to an expired status. Business processes to reflect that outcome will be determined during the prescribed period.

The IOFD date is the most reliable and relevant field currently in Smart Plan (SMP) and so for most subdivisions DLI will be able to make plans in order for dealings as at the date it is endorsed as approved by WAPC. Plans subject to deferred final marking or deferred referencing will now need the Initial Survey Certificate (ISC) to be lodged before DLI will send the plan to WAPC for endorsement.

Exceptions will be Special Survey Area (SSA) subdivisions in which the Final Survey Certificate (FSC), survey sheets and e-FB are lodged after the WAPC approval has been endorsed. SMP is currently being amended to more effectively use the date on which plans are endorsed with the approval of WAPC.

SECTION 147 - Approval required for certain transfers and other dealings (reflects Section 21 of TP&D Act)

This section continues to allow the Registrar of Titles to register a transfer, conveyance, lease or mortgage for part of the land that has been approved in writing by the WAPC.

The reference to "Part Lots" is to cover existing part lots remaining plans or diagrams that have been lodged but not dealt on. The current policy of DPI and DLI is for all new plans lodged; there will be no new part lots created.

SECTION 149 – Conditions on rural land (tied lots)

This is a new provision, the purpose of which is to enable tied lots to be created as part of the subdivision process where the lot is for a particular agricultural purpose and the landowner has existing agricultural land that the transferred lot will be worked in conjunction with as part of the one agricultural enterprise. This section will not be proclaimed until regulations and business processes have been developed. It is likely to impact Smart Plan, Smart Register and Cadastral Survey Data (CSD) files. It is expected that regulations will be gazetted before the end of this year.

SECTION 150 – Conditions on road access

This is a new section that provides for the imposition of a statutory covenant restricting or prohibiting access from a portion of land to a road abutting the portion of land. It will not be proclaimed until regulations and business processes have been developed. It is likely to impact Smart Plan and CSD



files. It is expected that regulations will be gazetted before the end of this year and will replace the need for TLA 129BA restrictive covenants for restricting road access.

SECTION 152 - Certain land to vest in the Crown (replaces Section 20A of TP&D Act)

1) Where it is a condition of approval by the WAPC that certain parts of the land shown on a diagram or plan of survey relating to the subdivision or a plan under the Strata Titles Act 1985 are to vest in the Crown, when the new titles for the subdivision are created and registered, those parts are to vest in the Crown for the following purposes:

- (a) Conservation or protection of the environment;
- (b) An artificial waterway;
- (c) A pedestrian access way;
- (d) A right-of-way;
- (e) A reserve for water supply, sewerage, drainage, foreshore management, waterway management or recreation.
- (f) A public purpose specified in the condition and related to the subdivision.

Old Note on Survey for Vested Lots:

As a caution to conveyancers the plan auditor places a comment on the survey before the 9/4/2006 "subject to section 20A TP&D Act".

New Note on Survey for Vested Lots:

As a caution to conveyancers the plan auditor places a comment on the survey on or after 9/4/2006 "subject to section 152 P&D Act".

The documents necessary to remove encumbrances affecting the land to vest in the Crown must be lodged at the same time as an application for titles for the new lots.

Subject to the encumbrances listed below the land subject to the condition vests in the Crown by force of this section without any conveyance, transfer or assignment or the payment of any fee.

2) Land vested under this section:

- (a) is Crown Land;
- (b) does not form part of a parcel comprised in a plan that is registered under the Strata Titles Act 1985;
- (c) is to be taken to be reserved under section 41 of the Land Administration Act 1997 for the purpose set out in the condition; and
- (d) may be dealt with in accordance with the Land Administration Act 1997.

3) Land vested under this section is to be vested subject to:



- (a) any easement on that land created for the purposes of the subdivision, shown on the diagram or plan of survey and referred to in section 167 of the Act;
- (b) any easement on that land created under Part IVA of the Transfer of Land Act 1893 for the purposes of the subdivision and shown on the diagram or plan of survey;
- (c) any existing encumbrance specified in a direction of the Minister responsible for the administration of the Land Administration Act 1997, or a person authorized in writing by that Minister for the purposes of this section, lodged with the Registrar of Titles on or before the vesting; and
- (d) any encumbrance prescribed, or of a class prescribed, by the regulations (No regulations at this stage, this section was inserted to allow a measure of flexibility to enable regulations to be made that prescribed additional encumbrances that section 152 land vests subject to).

4) A Crown Land Title will automatically be created using an Application (Form A6) for new titles when the plan of subdivision has more than one lot and land is vested in the Crown. The Crown Land Title will have the following notation in the limitations, Interests, Encumbrances and Notifications panel.

The old Smart Register (SMR) endorsement is:

**VESTED BY THE REGISTRAR UNDER SECTION 20A OF THE
TOWN PLANNING & DEVELOPMENT ACT 1928 FOR THE
PURPOSE OF**

The new SMR endorsement will be:

**VESTED BY THE REGISTRAR OF TITLES UNDER SECTION 152
OF THE PLANNING & DEVELOPMENT ACT 2005 FOR THE
PURPOSE OF**

When the application has been processed through Smart Register creating the Crown Land Title an automatic notice will be sent by email to Land Boundary Services Branch for updating of Smart Plan to show the vested lot as Crown Land and to DPI for notification that the vested Crown Land Title has been created.

SECTION 165 - Record of conditions on title (reflects Section 12A TP&D Act)

This section of the Act records conditions affecting use of land on Certificates of Title and were formerly lodged as Memorials and now as a Notification. The Notification is to make owners or prospective owners of the land aware of hazards or other factors seriously affecting the use or enjoyment of that land and determines that the title and land register in respect of that land should be noted accordingly.



The section has not changed and is silent on its effect. The Notification is just treated as a notice on the Certificate of Title.

The Notification is to be shown in the Limitations, Interests, Encumbrances and Notifications panel of any subsequent instrument.

WAPC consent is not required to be endorsed on the instrument.

The new form is a Notification (lodged as a NO) created under section 165 of the Act as determined by the Registrar of Titles – See attached form.

Currently the SMR endorsement is:

**J.....- NOTIFICATION TOWN PLANNING & DEVELOPMENT ACT
1928 LODGED**

The new SMR endorsement will be:

**J.....- NOTIFICATION SECTION 165 PLANNING &
DEVELOPMENT ACT 2005 LODGED**

The notification can be removed by lodgement of a Withdrawal of Notification. In a prescribed form determined by the Registrar of Titles - See attached form.

The normal registration fees apply to the lodgement of the Notification and Withdrawal of Notification.

SECTION 166 Encroachments (reflects Section 25 TP&D Act)

Except for the statutory reference there will be no change to the current procedures for initiating a subdivision in cases where a building encroaches upon land the property of another owner to the extent of not more than one metre.

SECTION 167 Easements (reflects Section 27A TP&D Act)

Section 167 of the Act replaces section 27A TP&D Act for creating easements.

Section 167 of the Act allows an easement to be made in favour of a holder of a license under a written law for the purpose of supplying a utility service such as telecommunication companies (Telco's). This recognises the deregulation of utility services and competition policy.



The Town Planning & Development (Easement) Regulations 1983 have not been replaced and regulations 5 to 9 still apply until further regulations are made by DPI.

Regulation 5 is for Local Authority.

Regulation 6 is for Metropolitan Water Authority.

Regulation 7 is for State Energy Commission re above ground electric easement.

Regulation 8 is for State Energy Commission re underground electric easement.

Regulation 9 is for State Energy Commission re gas easement.

In addition to the regulations the Act under section 167 (1) (b) is defined as part:

- (ii) a licensee as defined in the *Water Services Licensing Act 1995*, for the purpose of water supply, sewerage, irrigation or drainage works or access to water supply, sewerage, irrigation or drainage works;
- (iii) the holder of a licence under the *Electricity Industry Act 2004* for the purpose of the supply of electricity or access to electricity supply works;
- (iv) the holder of a distribution licence under the *Energy Coordination Act 1994* for the purpose of the supply of gas, or access to gas supply works, under the authority of that licence; or
- (v) any holder of a licence under a written law for the purpose of the supply of a utility service or access to a utility service, under the authority of that licence,

the land becomes subject to an easement in favour of the person or authority mentioned on the plan or diagram for the purpose mentioned on the diagram or plan.

A new sub-regulation will be required to handle Telco's but this will not be prepared in the short term. Easements for utility services will not be possible until the new regulations have been gazetted.

Section 167 of the Act can also be used to create automatic easements on strata plans that don't require WAPC approval.



Currently the SMR endorsement is:

**EASEMENT BURDEN CREATED UNDER SECTION 27A OF T.P.&D. ACT
– SEE DEPOSITED PLAN**

The new SMR endorsements will be:

**EASEMENT BURDEN CREATED UNDER SECTION 167. P. &D. ACT FOR
DRAINAGE PURPOSES TO LOCAL AUTHORITY – SEE (Insert survey
reference)**

**EASEMENT BURDEN CREATED UNDER SECTION 167. P. &D. ACT FOR
WATER, SEWERAGE OR DRAINAGE PURPOSES TO..... (Insert survey
reference)**

**EASEMENT BURDEN CREATED UNDER SECTION 167. P. &D. ACT FOR
ABOVE GROUND ELECTRICITY PURPOSES TO (Insert survey
reference)**

**EASEMENT BURDEN CREATED UNDER SECTION 167. P. &D. ACT FOR
UNDERGROUND ELECTRICITY PURPOSES TO (Insert survey
reference)**

**EASEMENT BURDEN CREATED UNDER SECTION 167. P. &D. ACT FOR
GAS PURPOSES TO (Insert survey
reference)**

**EASEMENT BURDEN CREATED UNDER SECTION 167. P. &D. ACT
TO..... (Insert survey
reference)**

SECTION 168 – Roads (reflects Section 295 (5) LG (MP) Act 1960 and Section 28 TP&D Act 1928)

This section provides that land on a plan, including a strata/survey-strata plan, shown as a new road is dedicated as a road. The requirement in section 295(5) for roads to be over 6 metres in width has been removed. There will be no change to current procedures – other than the new statutory reference.

Section 168 (1) & (2) of the Act replaces section 295 (5) of the LG (MP) Act for creating and dedicating new roads.

Section 168 (3) of the Act for road widening replaces section 28 (3) of TP&D Act.

Section 168 (5) of the Act for road widening replaces section 28 (1) of TP&D Act.



Section 168 (5) of the Act requires the transfer of land document used as the vehicle to approve the survey to now refer to "In order that the land may be dedicated as a road pursuant to section 168 (5) of the P&D Act 2005" in the consideration panel.

SECTION 180 - Notification may be lodged if compensation paid (reflects Section 36 MRTPS Act and Section 35 WAPC Act)

This section of the Act provides for recording conditions on Certificates of Title as a Notification. They were formerly lodged as Caveats.

A caveat lodged under section 36 of the MRTPS Act or section 35 of the WAPC Act but not registered before the commencement day may be registered under section 180 of the Act as if it were a notification under that section of the Act.

When compensation for injurious affection to any land has been paid under section 177 of the Act, the responsible authority may lodge a Notification (lodged as a NO) created under section 180 of the Act as determined by the Registrar of Titles.

The Notification is to specify:

- (a) the date of payment of compensation;
- (b) the amount of compensation paid;
- (c) the proportion (expressed as a percentage) which the compensation bears to the unaffected value of the land as assessed under section 179(2) of the Act.

The Notification is registered and not lodged by the responsible authority as set out in the definitions of the Act.

The new SMR endorsement will be:

**J..... NOTIFICATION – SECTION 180 COMPENSATION PAID
PLANNING & DEVELOPMENT ACT 2005 REGISTERED**

The Notification can be removed by lodgement of a Withdrawal of Notification in a prescribed form determined by the Registrar of Titles.

The Notification is to be shown in the Limitations, Interests, Encumbrances and Notifications panel of any subsequent instrument. The responsible authority consent is not required to be endorsed on the instrument.

The normal registration fees apply to the lodgement of the Notification and Withdrawal of Notification.



OFFICE USE ONLY

WITHDRAWAL OF NOTIFICATION

LODGED BY

ADDRESS

PHONE NO.

FAX NO.

REFERENCE NO.

ISSUING BOX NO.

PREPARED BY

ADDRESS

PHONE NO.

FAX NO.

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY

TITLES, LEASES, DECLARATIONS ETC LODGED
HEREWITH

- 1. _____ Received items
- 2. _____ Nos.
- 3. _____ Receiving Clerk

ENDORISING INSTRUCTIONS

EXAMINED

Registered pursuant to the provisions of the TRANSFER OF LAND ACT 1893 as amended on the day and time shown above and particulars entered in the Register Book

Initials of
signing
officer

REGISTRAR OF TITLES